

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Case No. 4:11-cr-157
v.)	
)	
JOHN C. KLINE,)	PLEA AGREEMENT
)	
Defendant.)	

The United States of America (also referred to as "the Government") and the Defendant, John C. Kline, and Defendant's attorney, enter into this Plea Agreement.

A. CHARGES

1 Subject Offense. Defendant will plead guilty to Counts 1 and 2 of the Indictment, that is, bank fraud, in violation of Title 18, United States Code, Section 1344(1).

2 Charges Being Dismissed. If the Court accepts this Plea Agreement, Counts 3-9 of the Indictment will be dismissed at the time of sentencing.

3 No Further Prosecution. The Government agrees that Defendant will not be charged in the Southern District of Iowa with any other federal criminal offense arising from the financial institution fraud charged in the indictment. This paragraph and this Plea Agreement do not apply to (1) any criminal act occurring after the date of this agreement, (2) any crime of violence, or (3) any criminal offense which Defendant did not fully disclose to law enforcement during Defendant's interviews pursuant to any proffer or other agreements with the United States.

B. MAXIMUM PENALTIES

4 Maximum Punishment. Defendant understands that each count of the crimes to which Defendant is pleading guilty carries a maximum sentence of up to 30 years in prison; a maximum fine of \$1,000,000; and a term of supervised release of 5 years. A mandatory special assessment of \$100 per count also must be imposed by the sentencing court.

5 Supervised Release--Explained. Defendant understands that, during any period of supervised release or probation, Defendant will be under supervision and will be required to comply with certain conditions. If Defendant were to violate a condition of supervised release, Defendant could be sentenced up to thirty (30) years in prison, without any credit for time previously served.

6 Detention. Provided that Defendant does not violate any conditions of Defendant's pretrial release, and does not appear to be mentally at risk to harm himself or any other person, the Government agrees that Defendant may remain on pretrial release pending imposition of sentence and will recommend that Defendant be permitted to self-report to serve any term of imprisonment imposed by the Court.

C. NATURE OF THE OFFENSE -- FACTUAL BASIS

7 Elements Understood. Defendant understands that to prove the offense alleged under **Counts 1 and 2 (BANK FRAUD)**, the Government would be required to prove beyond a reasonable doubt the following elements:

- (1) The Defendant knowingly executed, participated in or attempted to execute a scheme to defraud a financial institution;

- (2) The Defendant did so with the intent to defraud; and
- (3) The financial institution was insured by the United States Government Federal Deposit Insurance Corporation.

Factual Stipulations. Attached hereto as Attachment “A”, and incorporated by reference herein, are factual stipulations entered into between the parties, including the factual stipulations of Defendant’s offense conduct relating to the subject offense. Defendant acknowledges that these statements are true. The stipulations in this Plea Agreement and Attachment “A” are limited to this Plea Agreement and are not a stipulation to allegations not contained in Attachment “A”.

8 Truthfulness of Factual Basis. Defendant understands that, during the change of plea hearing, the judge and the prosecutor may ask Defendant questions under oath about the offense to which Defendant is pleading guilty, in the presence of Defendant’s attorney. Defendant understands that Defendant must answer these questions truthfully, and that Defendant can be prosecuted for perjury if Defendant gives any false answers.

9 Venue. Defendant agrees that venue for this case is proper for the United States District Court for the Southern District of Iowa.

D. SENTENCING

10 Sentencing Guidelines. Defendant understands that Defendant’s sentence will be determined by the Court after considering the advisory United States Sentencing Guidelines, together with other factors set forth by law and the terms of this agreement. The Sentencing Guidelines establish a sentencing range based upon factors determined to be present in the case, which include, but are not limited to the following:

- (a) the nature of the offense to which Defendant is pleading guilty;
- (b) the Defendant's role in the offense;
- (c) the nature and extent of Defendant's criminal history (prior convictions);
- (d) the number of victims;
- (e) the loss amount to the victims of the offense;
- (f) acceptance or lack of acceptance of responsibility.

For purposes of this plea agreement the parties stipulate to the following sentencing considerations:

- (a) a base offense level of 7 under USSG § 2B1.1(a)(7);
- (b) that the Defendant shall be responsible for a loss amount, in an amount between \$1,000,000 and \$2,500,000, as determined by the Court, resulting in a 16 level increase under USSG § 2B1.1(b)(1);
- (c) that the Defendant shall receive a two-level increase under USSG § 2B1.1(b)(2), because the offense involved more than ten victims;
- (d) that the Defendant shall receive a three-level reduction for acceptance of responsibility pursuant to USSG § 3E1.1, subject to paragraph 12 of this plea agreement;
- (e) that the Defendant falls into a Criminal History Category of I;
- (f) that the Defendant's final offense level, prior to any variance or departures, should be a level 22;
- (g) that the Court should grant a downward departure and/or variance, resulting in a sentence of thirty (30) months, based on all of the unique facts and circumstances of this case, including Defendant's cooperation with the involved financial institutions and any alleged acquiescence of some bank officials to Defendant's conduct, as well as any other factors under 18 U.S.C. § 3553(a), and that the parties will not advocate for a sentence above or below this amount;

- (h) that the parties agree not to seek any other variances or departures, upward or downward for any purposes other than as set forth above.

11 Acceptance of Responsibility. The government agrees to recommend that Defendant receive credit for acceptance of responsibility under USSG § 3E1.1. The government reserves the right to oppose a reduction under § 3E1.1 if after the plea proceeding Defendant obstructs justice, fails to cooperate fully and truthfully with the United States Probation Office, attempts to withdraw Defendant's plea, or otherwise engages in conduct not consistent with acceptance of responsibility. If the base offense level is 16 or above, as determined by the Court, the government agrees that Defendant should receive a 3-level reduction, based on timely notification to the government of Defendant's intent to plead guilty.

12 Presentence Report. Defendant understands that the Court may defer a decision as to whether to accept this Plea Agreement until after a Presentence Report has been prepared by the United States Probation Office, and after Defendant's attorney and the Government have had an opportunity to review and challenge the Presentence Report. The parties are free to provide all relevant information to the Probation Office for use in preparing a Presentence Report.

13 Evidence at Sentencing. The parties may make whatever comment and evidentiary offer they deem appropriate at the time of sentencing and entry of plea, provided that such offer or comment does not violate any other provision of this Plea Agreement. Nothing in this Plea Agreement restricts the right of Defendant or any victim to make an allocution statement, to the extent permitted under the Federal Rules of Criminal Procedure, nor does this Plea Agreement convey any rights to appear at proceedings or make statements that do not otherwise exist.

14 Joint Sentencing Recommendation. Under Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the parties agree that the Court should utilize a sentence of thirty (30) months pursuant to the stipulations above, and will not advocate for a higher or lower sentence at the time of sentencing. The parties agree that this sentence takes into account all of the relevant factors set forth under 18 U.S.C. § 3553(a), including the advisory sentencing guidelines calculation, the nature and circumstances of the offense, the history and characteristics of the defendant, and other pertinent factors. Should the Court decline to impose this recommended sentence, Defendant may withdraw Defendant's plea of guilty and the case will then be set for trial; likewise, if the Court declines to impose the recommended sentence, the Government also may withdraw from this Plea Agreement and the case will be set for trial. In the event that the relevant advisory guidelines are amended and made retroactive under 18 U.S.C. § 3582(c)(2), Defendant waives any right to seek a sentencing reduction in exchange for this Rule 11(c)(1)(C) plea agreement.

15 Criminal History. Defendant has represented to the United States that Defendant has no prior criminal history.

E. FINES, COSTS, AND RESTITUTION

16 Fines and Costs. Issues relating to fines and/or costs of incarceration are not dealt with in this agreement, and the parties are free to espouse their respective positions at sentencing.

17 Special Assessment. Defendant agrees to pay the mandatory special assessment of \$200 at or before the time of sentencing, as required by 18 U.S.C. § 3013.

18 Restitution. Defendant and the United States agree that both parties may present evidence at the time of sentencing as to whether the Court should impose an order of restitution

and their respective positions as to the amount of restitution, if any; that if such an order of restitution is entered, it shall be due and payable immediately; and that if Defendant is not able to make full payment immediately, Defendant shall cooperate with the United States Probation Office in establishing an appropriate payment plan, which shall be subject to the approval of the Court, and thereafter in making the required payments. Any such payment plan does not preclude the Government from utilizing any collections procedures pursuant to the Federal Debt Collections Act and including the Treasury offset program. The parties agree that any restitution ordered as set forth above will be severable from any co-defendant and this Defendant will not be responsible for any restitution of any co-defendant, should restitution be ordered in the matter pending against his co-defendant.

19 Financial Statement. Defendant agrees to complete truthfully and in full a financial statement provided by the U.S. Attorney's Office, and return the financial statement to the U.S. Attorney's Office within 30 days of the filing of this Plea Agreement.

F. LIMITED SCOPE OF AGREEMENT

20 Limited Scope of Agreement. This Plea Agreement does not limit, in any way, the right or ability of the Government to investigate or prosecute Defendant for crimes occurring outside the scope of this Plea Agreement. Additionally, this Plea Agreement does not preclude the Government from pursuing any civil or administrative matters against Defendant, including, but not limited to, civil tax matters and civil forfeiture which arise from, or are related to, the facts upon which this investigation is based.

21 Agreement Limited to Southern District of Iowa. This Plea Agreement is limited to the United States Attorney's Office for the Southern District of Iowa, and cannot bind any

other federal, state or local prosecuting, administrative, or regulatory authorities.

22 Victims/Banks/Corporations not a party to this Agreement. Defendant understands that any victims/banks/corporations in the indictment are not a party to this Plea Agreement, and that the “loss” and “restitution” amounts applicable to this criminal case do not resolve any claims that said victims/banks/corporations may have against Defendant. Defendant understands that any victim/bank/corporation remains free to pursue all lawful civil remedies it may deem appropriate.

23 Employment Restrictions. Defendant understands that Defendant will be prohibited by law from any employment with a federally-insured financial institution (insured by either the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA) as a result of Defendant’s plea of guilty to the subject offense. Defendant will be prohibited by law from participating, in any manner, in the conduct of the affairs of any federally insured-financial institution; Defendant may not continue as or become a director, officer, employee, or controlling stockholder of or agent for a federally-insured financial institution; and Defendant may not participate in any manner in the affairs of any federally insured financial institution, without the written approval of the FDIC and/or the NCUA) in accordance with Title 12, United States Code, Sections 1829 and 1785. Inasmuch as the underlying offense giving rise to this agreement is a violation of Title 18, United States Code, Section 1344(1), the FDIC and the NCUA may not approve an application for a ten-year period beginning with the date of Defendant’s plea of guilty. Defendant understands that the knowing violation of these prohibitions could result in criminal prosecution, with a possible sentence for five years or imprisonment and/or a \$1,000,000 fine.

G. WAIVER OF TRIAL, APPEAL AND POST-CONVICTION RIGHTS

24 Trial Rights Explained. Defendant understands that this guilty plea waives the right to:

- (a) continue to plead not guilty and require the Government to prove the elements of the crime beyond a reasonable doubt;
- (b) a speedy and public trial by jury, which must unanimously find Defendant guilty before there can be a conviction;
- (c) the assistance of an attorney at all stages of trial and related proceedings, to be paid at government expense if Defendant cannot afford to hire an attorney;
- (d) confront and cross-examine adverse witnesses;
- (e) present evidence and to have witnesses testify on behalf of Defendant, including having the court issue subpoenas to compel witnesses to testify on Defendant's behalf;
- (f) not testify or have any adverse inferences drawn from the failure to testify (although Defendant also has the right to testify, if Defendant so chooses); and
- (g) if Defendant is convicted, the right to appeal, with the assistance of an attorney, to be paid at government expense if Defendant cannot afford to hire an attorney.

25 Waiver of Appeal and Post-Conviction Review. Defendant knowingly and expressly waives any and all rights to appeal Defendant's conviction in this case, including a waiver of all motions, defenses and objections which Defendant could assert to the charge(s) or to the court's entry of judgment against Defendant. If the court imposes the sentence recommended by the parties, Defendant also waives any and all rights to appeal Defendant's sentence. Also, Defendant knowingly and expressly waives any and all rights to contest Defendant's conviction in any post-conviction proceedings, including any proceedings under 28

U.S.C. § 2255. These waivers are full and complete, except that they do not extend to the right to appeal or seek post-conviction relief based on grounds of ineffective assistance of counsel or prosecutorial misconduct not known to Defendant, or reasonably knowable, at the time of entering this Plea Agreement.

26 **H. VOLUNTARINESS OF PLEA AND OPPORTUNITY TO CONSULT
 WITH COUNSEL**

27 Voluntariness of Plea. Defendant represents that Defendant's decision to plead guilty is Defendant's own, voluntary decision, and that the following is true:

- (a) Defendant has had a full opportunity to discuss all the facts and circumstances of this case with Defendant's attorney, and Defendant has a clear understanding of the charges and the consequences of this plea, including the maximum penalties provided by law.
- (b) No one has made any promises or offered any rewards in return for this guilty plea, other than those contained in this written agreement.
- (c) No one has threatened Defendant or Defendant's family to induce this guilty plea.
- (d) Defendant is pleading guilty because in truth and in fact Defendant is guilty and for no other reason.

28 Consultation with Attorney. Defendant has discussed this case and this plea with Defendant's attorney and states that the following is true:

- (a) Defendant states that Defendant is satisfied with the representation provided by Defendant's attorney.
- (b) Defendant has no complaint about the time or attention Defendant's attorney has devoted to this case nor the advice the attorney has given.
- (c) Although Defendant's attorney has given Defendant advice on this guilty plea, the decision to plead guilty is Defendant's own decision.

Defendant's decision to enter this plea was made after full and careful thought, with the advice of Defendant's attorney, and with a full understanding of Defendant's rights, the facts and circumstances of the case, and the consequences of the plea.

I. GENERAL PROVISIONS

29 Entire Agreement. This Plea Agreement, and any attachments, is the entire agreement between the parties. Any modifications to this Plea Agreement must be in writing and signed by all parties.

30 Public Interest. The parties state this Plea Agreement is in the public interest and it takes into account the benefit to the public of a prompt and certain disposition of the case and furnishes adequate protection to the public interest and is in keeping with the gravity of the offense and promotes respect for the law.

31 Execution/Effective Date. This Plea Agreement does not become valid and binding until executed by each of the individuals (or their designated representatives) shown below.

J. SIGNATURES

32 Defendant. I have read all of this Plea Agreement and have discussed it with my attorney. I fully understand the Plea Agreement and accept and agree to it without reservation. I do this voluntarily and of my own free will. No promises have been made to me other than the promises in this Plea Agreement. I have not been threatened in any way to get me to enter into this Plea Agreement. I am satisfied with the services of my attorney with regard to this Plea Agreement and other matters associated with this case. I am entering into this Plea Agreement and will enter my plea of guilty under this Agreement because I committed the crime to which I am pleading guilty. I know that I may ask my attorney and the judge any questions about this

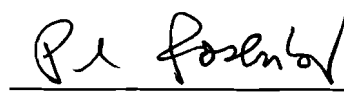
Plea Agreement, and about the rights that I am giving up, before entering into the plea of guilty.

1-9-13
Date


JOHN C. KLINE

33 Defendant's Attorney. I have read this Plea Agreement and have discussed it in its entirety with my client. There is no Plea Agreement other than the agreement set forth in this writing. My client fully understands this Plea Agreement. I am satisfied my client is capable of entering into this Plea Agreement, and does so voluntarily of Defendant's own free will, with full knowledge of Defendant's legal rights, and without any coercion or compulsion. I have had full access to the Government's discovery materials, and I believe there is a factual basis for the plea. I concur with my client entering into this Plea Agreement and in entering a plea of guilty pursuant to the Plea Agreement.

1/9/13
Date

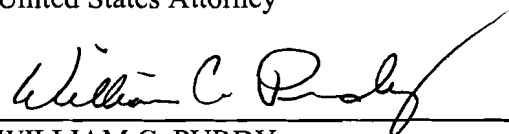

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34 United States. The Government agrees to the terms of this Plea Agreement.

Nicholas A. Klinefeldt
United States Attorney

1/9/13
Date

By:



WILLIAM C. PURDY
Assistant U.S. Attorney
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Attachment "A"

STIPULATION OF FACTS

1. From on or about November 2004, until on or about June 2006, Defendant John C. Kline, did knowingly execute, participate in or attempt to execute a scheme to defraud a financial institution in the Southern District of Iowa and elsewhere by diverting funds or causing funds from a loan by First Bank to Meadow Cove, L.C. ("Meadow Cove project"), for the construction and development of a condominium project in the Polk County, Iowa, to be diverted to purposes other than the Meadow Cove project, including, but not limited to:

- a. Using approximately \$220,000 of a \$260,309 December 1, 2004 advance on the Meadow Cove project to partially fund a down payment for purchase of a condominium for investment in Sarasota, Florida;
- b. Using approximately \$200,000 of a \$604,060 April 4, 2006 advance on the Meadow Cove project to pay John C. Kline, Inc., for unrelated business obligations of John C. Kline; and,
- c. Using approximately \$56,777.72 of a \$494,788.92 advance on the Meadow Cove project to pay unrelated obligations of Johnston Land Co. II.

2. The Defendant admits that he diverted funds or caused funds to be diverted from the Meadow Cove project through making material misrepresentations to First Bank and/or omitting material information to First Bank or causing material misrepresentations and/or the omission of material information to First Bank regarding the intended use of certain funds being advanced on the Meadow Cove project, the status of development of the Meadow Cove project, and the extent to which Meadow Cove had received lien waivers from various subcontractors on the Meadow Cove project.

3. The Defendant admits that the material misrepresentations and/or omissions of

material facts made or caused to be made by the Defendant to First Bank were done with the intent to defraud First Bank.

4. Defendant acknowledges that at all material times during the Meadow Cove project that First Bank was a financial institution insured by the United States Government Federal Deposit Insurance Corporation and agrees that one or more of the acts constituting the offense charged in Count 1 of the indictment occurred in the Southern District of Iowa.

5. From on or about July 2006, until on or about January 2007, Defendant John C. Kline, did knowingly execute, participate in or attempt to execute a scheme to defraud a financial institution in the Southern District of Iowa and elsewhere by diverting funds or causing funds from a loan by First National Bank Midwest to John C. Kline, Inc. ("Heritage Hills project"), for the development of an 18 acre parcel of real estate into a residential housing development located in Dallas, County, Iowa, to be diverted to purposes other than the Heritage Hills project, including, but not limited to:

- a. Using approximately \$200,000 of a \$326,405.29 October 18, 2006 advance on the Heritage Hills project to pay unrelated business obligations on projects other than the Heritage Hills project; and,
- b. Using approximately \$377,000 of a \$414,081.89 October 20, 2006 advance on the Heritage Hills project to pay unrelated obligations to Hillside Land Co., L.C., a development project in Ankeny, Iowa.

6. The Defendant admits that he diverted funds or caused funds to be diverted from the Heritage Hills project through making material misrepresentations to First National Bank Midwest and/or omitting material information to First National Bank Midwest or causing material misrepresentations and/or the omission of material information to First National Bank Midwest regarding the intended use of funds being advanced on the Heritage Hills project.


7. The Defendant admits that the material misrepresentations and/or omissions of material facts made or caused to be made by the Defendant to First National Bank Midwest were done with the intent to defraud.

8. Defendant acknowledges that all material times during the Heritage Hills project that First National Bank Midwest was a financial institution insured by the United States Government Federal Deposit Insurance Corporation and agrees that one or more of the acts constituting the offense charged in Count 2 of the indictment occurred in the Southern District of Iowa.


9. Defendant hereby certifies that the facts set forth above are true and accurate to the best of Defendant's knowledge.

1-9-13
Date

1/9/13
Date



JOHN C. KLINE
Defendant




PAUL ROSENBERG
Attorney for Defendant

Nicholas A. Klinefeldt
United States Attorney

1/9/13
Date

By:



WILLIAM C. PURDY
Assistant United States Attorney